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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,898	01/15/2002	Tadakatsu Ikenoya	027650-946	2950

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EXAMINER

MUSSER, BARBARA J

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/936,898

Applicant(s)

IKENOYA, TADAKATSU

Examiner

Barbara J. Musser

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 7-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 7, it is unclear whether the linear low density polyethylene of line 11 is the same linear low density polyethylene of lines 7-8, or whether they are mixed together or form two different layers. For the purposes of examination, they are assumed to refer to the same material.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4 and 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rebholz in view of Bengtsson et al., Badische, Fuller(U.S. Patent 5,003,142) Hess et al.(U.S. Patent 4,425,287), and the admitted prior art.

Rebholz discloses a laminate made of a paper substrate(1), an adhesive(2), an aluminum foil(3), a primer(4), a coextruded barrier layer of ethylene-methyl acrylate

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copolymer(5), and a polyolefin film.(Abstract) Ethylene-methyl acrylate copolymer and ethylene methacrylic acid copolymer are the same polymer, simply named using different conventions. While this material is not described as an adhesive, polymers in general can bond to other materials when hot. A primer is a type of anchor coat, and ethylene acrylic acid, the primer used in Rebolz,(Col. 2, ll. 29-35) is a known anchor coat material. The reference does not disclose how the laminate is made, only that it can be made by means common in the art and that laminates are most easily prepared in subcombinations.(Col. 3, ll. 22-30) Bengtsson et al. discloses a conventional method of forming a laminate having aluminum foil in it is to apply the barrier layer(aluminum foil) to a carrier, roll it up and store it, and then unroll it and coextrude an adhesive layer to bond the carrier to the paper substrate.(paragraphs [0019], [0025], [0041], [0047],[0085]; Figure 6C) Since the stated purpose of Bengtsson et al.'s invention is to use the apparatus used to make laminates having aluminum foil to make laminate without aluminum foil, one in the art would understand that the apparatus of the reference was the same as an apparatus to form a laminate having aluminum foil.

The references do not disclose corona treating the aluminum foil before bonding it to the paper. Badische discloses that electric discharge treatment(corona discharge) of a metal surface increases the adhesion of a plastic film to the metal surface.(Abstract) It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the process of Bengtsson et al. to make the laminate of Rebholz since Rebholz discloses any common method of making the laminate can be used and Bengtsson et al. discloses a common way of making a

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laminate containing aluminum foil particularly since Bengtsson et al. forms the laminate using subcombinations(the foil and carrier) which Rebholz discloses is the most easy way to form such laminates(Col. 3, ll. 22-30) and to corona treat the aluminum foil before bonding it to the paper via a polyolefin since this would improve adhesive of the aluminum foil to the polyolefin.(Badische; Abstract) While Bengtsson et al. does not disclose the length of time or temperature the roll is stored at, storing for several days at ambient conditions is well-known in the laminate arts as shown for example by Fuller which shows a laminate can be stored for 3 days at room temperature(Col. 6, ll. 53-56) and Hesse et al. which shows storage for 24 hours at room temperature(Col. 11, ll. 44-46) indicating it is known to store rolls of material for a few days at room temperature prior to use. It would have been obvious to one of ordinary skill in the art at the time the invention was made to store the film for any conventional number of days such as 1-3 since it is well-known to store laminates for several days and since Bengtsson et al. does not disclose the specific storage length. Absent unexpected results for this storage time versus other storage times, the claimed range is considered obvious.

Rebholz discloses the polyolefin film has a thickness of 1-2 mils(25-50 micrometers).(Col. 3, ll. 8) The references cited above do not disclose the polyolefin film as comprising a linear low density polyethylene with a narrow molecular weight distribution. The admitted prior art discloses it is known to use metallocene based linear low density polyethylene in laminates for packaging. These polyethylenes have a narrow molecular weight distribution.(Pg. 3) It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the metallocene based

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linear low density polyethylene of the admitted prior art as the polyolefin film of Rebholz, Bengtsson et al., Badische, Fuller, and Hess et al. since the admitted prior art discloses such films have been commonly used in packaging laminates in the past.

Regarding claim 2, while the references are silent as to the degree of contamination of the polyolefin film, one in the art would appreciate that since this is the layer that contacts the contents of the package, it would be desirable for the layer to have no contaminants as they might contaminate the food within the package.

Regarding claims 4, 11, and 12, the references cited above do not disclose the anchor coat having ascorbic acid or vitamin E in it. The admitted prior art discloses it is known to provide ascorbic acid in conjunction with L-ascorbic acid in the adhesive layer to remove oxygen and to prevent the oxygen remover(L-ascorbic acid) from bleeding out of the adhesive layer.(Pg. 4) It would have been obvious to one of ordinary skill in the art at the time the invention was made to place ascorbic acid and L-ascorbic acid in the anchor coat since they would both remove oxygen from the packaging and prevent the oxygen remover from bleeding out of the adhesive layer.(Pg. 4)

Regarding claim 6, the references are silent as to the length of time the barrier layer and carrier are on the roll prior to use, but one in the art would appreciate that any conventional length of time, dependent on the desired stockpile and possible disruptions in processing, would be used.

Regarding claim 8, while the references are silent as to the degree of contamination of the polyolefin film, one in the art would appreciate that since this is the

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layer that contacts the contents of the package, it would be desirable for the layer to have no contaminants as they might contaminate the food within the package.

Regarding claim 9, the admitted prior art discloses it is known to use metallocene based linear low density polyethylene in laminates for packaging. These polyethylenes have a narrow molecular weight distribution.(Pg. 3) Low density polyethylenes are conventionally described as having a density less than 0.925. Melt flow rate is a measure of the width of the molecular weight distribution, and since all metallocene polyethylenes have a narrow molecular weight distribution, they would have melt flow rates of 5-20. Since the polyethylene of the admitted prior art is intended for the same purpose as applicant's namely of protection in packaging, one in the art would appreciate that it would have the same general molecular weight range as applicant's. The melting temperature and swelling ratio are a function of the density and molecular weight distribution. Since the admitted prior art has the same density and molecular weight distribution, it would have the same melting temperature range and swelling ratio.

5. Claims 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rebholz, Bengtsson et al, Badische, Fuller, Hesse et al., and the admitted prior art as applied to claims 4 and 7 above, and further in view of Coutelle et al.(U.S. Patent 5,582,638).

The references cited above do not disclose a phyllosilicate in the anchor coat. Coutelle et al. discloses phyllosilicates can act as adhesive thickeners.(Col. 1, ll. 7-15) It would have been obvious to one of ordinary skill in the art at the time the invention

was made to have a phyllosilicate in the anchor coat since this would thicken it to the proper consistency.(Col. 1, ll. 7-15)

### ***Response to Arguments***

6. Applicant's arguments filed 9/12/05 have been fully considered but they are not persuasive.

Regarding applicant's argument that the references do not disclose using linear low density polyethylene as the polyolefin in the laminate, the admitted prior art discloses that using linear low density polyethylene in these type of laminates is well-known in the laminate arts.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of



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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

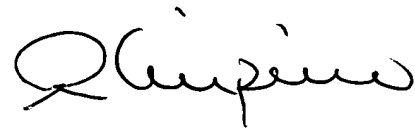
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara J. Musser whose telephone number is (571) 272-1222. The examiner can normally be reached on Monday-Thursday; alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571)-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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